

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 23-cv-21760-GAYLES

NEUROMD MEDICAL  
TECHNOLOGIES, LLC

Plaintiff.

v.

AMAZON.COM, INC.

Defendant.

**PLAINTIFF, NEUROMD TECHNOLOGIES, LLC’S REPLY TO RESPONSE  
TO MOTION TO COMPEL DEPOSITION OF THE CORPORATE REPRESENTATIVE  
OF AMAZON.COM**

Plaintiff, NEUROMD TECHNOLOGIES LLC (“NeuroMD”), through its undersigned counsel, hereby files this Reply to Response to Motion to Compel the deposition of the Corporate Representative of Amazon.com (“Amazon”), and in support thereof, states:

Following the filing of the Motion to Compel, Amazon finally provided a date for the Corporate Representative’s deposition. Amazon has offered February 13, 2024, only two days prior to the discovery cut-off. [ECF No. 27, 70-9]. NeuroMD maintains that this date was only provided after repeated attempts to obtain dates for the deposition. Thus, NeuroMD acknowledges to this Honorable Court that its motion to compel is technically moot.

However, NeuroMD would like to point out to the court that Amazon’s representation to the court that Undersigned counsel did not meet and confer is categorically false. NeuroMD conferred with Amazon’s counsel on several occasions to schedule the deposition, and indicated to him that a motion to compel would be forthcoming. Undersigned counsel spoke to Mr. Gratz on the telephone two (2) times requesting deposition dates and informed him that he would have

to seek court relief if Amazon did not provide a date for deposition. [ECF No. 69-2, 69-3, 69-4, 69-5]. Amazon's counsel, however, stated over the telephone and in an email that he would prefer a "pause" on the case. [ECF No. 70-4, email dated Jan 9, 5:14 p.m.]. In fact, Amazon has discouraged Undersigned counsel from noticing Amazon for deposition. *Id.* Undersigned counsel responded over the phone and email that NeuroMD was conducting Amazon's deposition, and if dates were not provided, a motion to compel would be filed. [ECF No. 70-6, Email Jan 12, 2024, ECF No. 70-7, Email dated Jan 16, 2024 at 8:20 a.m., ECF No. 70-8, Email dated Jan 16, 2024 at 4:39 p.m.].

Undersigned counsel did not serve a notice for taking deposition since Amazon would not provide a date its representative(s) were available. Undersigned counsel understands that the parties have an obligation to mutually coordinate agreeable dates for deposition. *Lozman v. City of Riviera Beach*, 2014 U.S. Dist. LEXIS 194075, \* 3 (S.D. Fla. April 11, 2014). It would have been futile to serve a notice for taking deposition when Amazon had not identified a corporate representative or an available date. While Amazon stated on December 6, 2023, that Amazon's representative would be available the week of January 15, 2024, at that time, Amazon still had not produced a single document in response to the request for production. Undersigned counsel did not want to schedule Amazon's deposition without having received complete answers to the interrogatories and production that NeuroMD propounded on Amazon. The scheduling of Amazon's deposition has been delayed until now due to Amazon's failure to completely answer the discovery propounded on it. [ECF No. 51, 66]. Indeed, to date, Amazon continues to produce additional documents, but has not updated its answers to interrogatories and production. Amazon produced additional documents on January 19, 2024, and January 22, 2024, respectively, but did

not label it to correspond to the any category in the request(s). See emails attached as Exhibits 1 and 2.<sup>1</sup>

NeuroMD understands the issue has been resolved, but only after it filed a motion to compel. Thus, NeuroMD asks for attorney's fees to be awarded to it.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the reply was served via the CM/ECF system this 23<sup>rd</sup> day of January 2024.

Respectfully submitted,  
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<sup>1</sup> NeuroMD has filed a motion to compel better answers to production and interrogatories and awaits the court's order. [ECF No. 51, 66].